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COMMISSION ON HUMAN RIGHTS

Fiftieth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 February 1994, at 10 a.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE MINISTER FOR FINANCE OF INDIA

1. The CHAIRMAN invited the Minister for Finance of India to address the Commission.

2. Mr. SINGH (India) said that the Commission was meeting in the wake of the World Conference on Human Rights which had provided a unique opportunity for review, renewal and reinvigoration of the international community's perception of and commitment to human rights. The current session of the Commission thus had the task of assessing and enriching the international consensus in its common quest for ensuring human dignity and human well-being.

3. The World Conference had recognized the need to strike a balance between the requirements of political and civil liberties and rights, on the one hand, and the fulfilment of the socio-economic aspirations of the global community, on the other. In providing a point of departure for future United Nations activities in the human rights field, the Vienna document clearly restated some fundamental concepts in the approach to human rights that his Government considered essential, namely, an endorsement of the principle of universality, objectivity and non-selectivity in the consideration of all human rights; the need to promote human rights in a just and balanced manner; respect for the principles of national sovereignty, territorial integrity and non-interference; the promotion and protection of human rights at the national and international levels without any conditions attached and renewed commitment to the rights of women, children and other vulnerable sections of society.

4. His Government's firm commitment to fundamental human rights was deeply rooted in the country's ancient culture and civilization. Since independence, it had sought to institutionalize that commitment by the deliberate choice of an open society and a democratic polity based on universal adult suffrage, respect for the dignity of the individual, the rule of law and a multi-party system. The founding fathers of the Republic had rejected the notion that poor countries could not afford the luxury of democracy. His Government had been firm in its conviction that democracy was the best guarantor of human rights and that it also provided an optimal political framework for development.

5. Countries as poor as India required a massive social and economic transformation to conquer the ancient scourges of poverty, ignorance and disease. To be durable, however, such fundamental changes had to be based on the free and willing consent of the people provided by a democracy. Democracy also reinforced the drive for equitable, participatory development and a fair sharing of the fruits of development. In turn, equitable development strengthened democracy by promoting a culture of tolerance and peaceful resolution of social and economic conflicts. His Government thus sincerely believed that both democracy and development were essential for sustaining and nurturing human rights.

6. Democracy in India was based on the participation of all the people and the accountability of elected representatives to the people's will. India had

built-in mechanisms for peaceful and orderly changes of government in response to the popular will, mechanisms that had been tested time and again and had proved their effectiveness. The independent judiciary was the custodian of the people's rights and acted zealously to protect them. A free and vibrant press, strong public opinion, assertive and active non-governmental organizations and, above all, a commitment to the rule of law fortified the country's democratic system and its legal safeguards.

7. The Constitution of India was an eloquent example of his nation's deep commitment to human rights. It proclaimed the basic human rights and fundamental freedoms and guaranteed their enjoyment by all citizens. Credible legal instrumentalities existed to enforce the fundamental rights guaranteed by the Constitution.

8. Recognizing that social disabilities might impair full enjoyment of those rights by all, the Constitution had been deliberately framed to provide for affirmative action in favour of those who could not exercise their human rights unaided. There were constitutional safeguards to ensure effective representation of the socially and economically deprived sections in the legislatures and in the public services.

9. Complete equality and respect for persons of all religions were not only enshrined in the Constitution and protected by his country's democratic institutions but were also the hallmark of its ethos. The Indian people were heirs to an ancient tradition of tolerance and respect for different religions and faiths and that was why India was home to so many linguistic and religious groups. It was the birthplace of four major religions and counted among its nationals nearly every major religious denomination. While the Indian State was secular in character, minorities were entitled to establish and manage their own institutions for religious, charitable and educational purposes. Any section of the citizens of India had the right to preserve and promote their distinct culture, language and script.

10. However, pluralistic democracy did not function in a void. Social and economic changes created their own tensions in all societies. Democracy provided opportunities for peaceful protest and political dissent. That was a healthy phenomenon and could help to ensure timely measures to correct the imbalances and distortions of the development process. Nevertheless, some divisive elements projected them in ethnic, religious and secessionist terms and endeavoured to impose their will by force instead of through peaceful democratic means involving dialogue and persuasion. The delicate balance of a pluralistic democracy was nurtured by respect for the rule of law.

11. The dilemma currently confronting many democracies was the maintenance of that delicate balance in the face of what had been recognized at the Vienna Conference as one of the most dangerous threats to the functioning of democratic States and as a violation of human rights, namely terrorism and the external forces which supported it. The very aim of the terrorist was to destroy the rule of law through calculated violence against individuals, the State and society. Terrorism which exploited religious differences was particularly pernicious when it was sponsored from abroad both for territorial gains and to subvert the secular fabric of democratic Governments.

12. It was most unfortunate that the principles of human rights and self-determination were being grossly misused by interested parties to challenge his country's unity, political cohesion and territorial integrity. India's commitment to the principle of self-determination was well acknowledged and it had been a leader in the historic struggle for decolonization. Selective and slanted definitions of the principle of self-determination served no legitimate purpose and were clearly a cover for promoting secessionism in an integral part of his country. If not effectively checked, such an approach could have disastrous effects on the orderly functioning of most societies.

13. Some parts of India had witnessed terrorism of unparalleled ferocity. Sponsorship of terrorist violence from abroad, in blatant pursuit of territorial gains, sought to destroy his country's secular and democratic pluralistic civil order. Over a four-year period, more than 7,000 persons had lost their lives and the misery inflicted by terrorists on peaceful citizens should be obvious from the fact that nearly 300,000 Indian citizens, both Hindu and Muslim, had had to flee their homes and become refugees in their own homeland.

14. To protect the human rights of millions of innocent citizens, his Government had had to enact special legislation. However, in all such special legislation, scrupulous care had been taken to protect the rights of the individual under due process of law. Habeas corpus was available in all circumstances to all under the Indian judicial system.

15. No country could claim that human rights violations never occurred in its territory and India was no exception. The Government was aware of certain excesses on the part of law-enforcement authorities assigned to counter terrorism. However, India had a strong tradition of punishing human rights violations and its legal system provided for remedial measures in such cases. It had recently established a National Human Rights Commission an independent body with autonomous monitoring jurisdiction. The Commission investigated complaints of human rights violations or of negligence by public officials in preventing such violations.

16. Committed to transparency and openness, India routinely allowed access by countless diplomats, journalists and political leaders to visit all parts of the country, including areas affected by terrorism. Representatives of the International Commission of Jurists and Amnesty International had been there recently, and a visit by the International Committee of the Red Cross (ICRC) was being arranged.

17. The human rights movement must not be politicized or become an instrument for erecting new barriers to the orderly functioning of democratic society. That was an issue that could be addressed by the High Commissioner for Human Rights, whose appointment his Government had always supported.

18. His Government attached particular importance to the human rights of women and children, whose neglect would lead to the decline of society as a whole. Noting that the World Conference on Human Rights had reaffirmed the right to development as a universal and inalienable right, he said that India had embarked on a massive programme of social and economic reform designed to

accelerate development, eradicate poverty, satisfy basic human needs and integrate its economy into the global economy. The externally inspired, and assisted terrorism of which it was a victim menaced the implementation of that programme. India was deeply committed to human rights but would never surrender to the forces of terrorism, challenging its territorial integrity. Its struggle against terrorism represented a struggle for the triumph of human diversity and cultural pluralism over the imposition of a monotonous uniformity in which the quality of life would surely deteriorate.

19. It was most unfortunate that the Prime Minister of Pakistan - for whom he had great respect and regard - should have used the Commission as a forum to convey a wholly erroneous view of the situation in the Indian State of Jammu and Kashmir. The charges she had levelled against his Government were baseless. It was his Government's sincere hope that the Commission would not be used to politicize human rights issues in that manner.

20. Mr. AKHUND (Pakistan), speaking on a point of order, said that his delegation wished to comment on a number of the points made by the Indian Minister for Finance and, in particular, on his references to the statement by the Prime Minister of Pakistan. Since his delegation would shortly be speaking under agenda item 9, however, it would not exercise its right of reply in the interest of saving time.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (item 4 of the provisional agenda) (continued) (E/CN.4/1994/9, 12-14, 96 and 98; A/48/96, 278 and 557)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (item 9 of the provisional agenda) (continued) (E/CN.4/1994/22 and 23; A/48/385)

21. Mr. ZHANG Yishan (China) said that the right of peoples to self-determination had been universally recognized as a basic prerequisite for the full enjoyment of human rights and fundamental freedoms. Inspired by that right, many countries had freed themselves from colonial domination or foreign occupation and had gained their independence and sovereignty.

22. Self-determination had three main elements: opposition to any foreign aggression, interference or domination; safeguarding the independence, sovereignty and territorial integrity of States; and ensuring the right of peoples to determine freely their political status and economic and social systems. As recently affirmed by the Vienna Declaration and Programme of Action and in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, the right to self-determination must not be used as a pretext to encourage or support any action which would impair the territorial integrity of sovereign and independent States.

23. At its forty-eighth session, the General Assembly had reaffirmed the right of peoples to self-determination and the legitimacy of the struggle of people for independence, territorial integrity, national unity, liberation from colonial domination, apartheid and foreign occupation. It had requested

the Commission on Human Rights to pay special attention to the right to self-determination in situations of foreign military intervention, aggression or occupation.

24. As experience had shown, distorted interpretations of the right to self-determination only exacerbated situations of ethnic conflict or social upheaval, and could even give rise to civil war or regional conflict, with a consequent threat to world peace and security. The international community must thus strive to preserve the original meaning of the concept of self-determination and to implement in earnest the provisions of the relevant international instruments and resolutions.

25. His Government welcomed the recent developments in the Middle East peace process, including the signature of the Declaration of Principles on Interim Self-Government Arrangements and the subsequent negotiations on the implementation of that Declaration. It hoped that a comprehensive and fair solution could be arrived at rapidly and that the Palestinian people would soon be able to exercise its right to self-determination.

26. Mr. WOOLCOTT (Australia) said that the signing of the Declaration of Principles and the exchange of letters of mutual recognition by Israel and the Palestine Liberation Organization represented a historic breakthrough. His Government fully supported the Middle East peace process and called on all parties to adopt moderate and flexible positions.

27. Despite such developments, violence in the occupied Arab territories remained at a disturbingly high level. The transfer of authority in the occupied territories must not be jeopardized by distrust and violence. Respect for human rights by both sides was crucial during the period ahead so that a climate of greater trust and tolerance could be established between Israelis and Palestinians, and amongst the Palestinians themselves.

28. Israel's serious security concerns, while valid, could not justify breaches of international law and internationally accepted human rights standards. Israel must accept the de jure applicability to the occupied territories of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and refrain from measures in violation of the Convention, including the indiscriminate use of live ammunition in other than life-threatening situations, unchecked attacks on Palestinians by Israeli settlers, and the continued construction of settlements in the occupied territories.

29. His Government also deplored the killing and wounding of Israeli security officials and civilians by Palestinian elements and the killing and torture of alleged Palestinian collaborators by other Palestinians. It urged the Palestine Liberation Organization and those Palestinians responsible for the establishment of civil authority in the occupied territories to ensure that they, too, respected internationally accepted human rights standards. In that connection, it welcomed the moves to establish a Palestinian human rights body.

30. His Government based its Middle East policy on two main premises: a total commitment to Israel's right to exist within secure and recognized

boundaries; and recognition of the right to self-determination of the Palestinian people, including its right, if it so chose, to independence and the possibility of an independent State. It thus supported a comprehensive solution to the dispute based on Security Council resolutions 242 (1967) and 338 (1973).

31. While self-determination was a right which applied to all peoples, its application under international law had, in practice, been limited to the context of decolonization. The objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples had largely been achieved and the time had come to contemplate the next phase in the evolution of the concept of self-determination.

32. By virtue of its history and because of its political force and dynamic nature, self-determination defied tight and tidy definitions and had to be considered in a broad context. The realization of the right to self-determination was not limited in time to the process of decolonization, nor was it accomplished in a single act. It entailed the continuing right of all peoples and individuals within each State to participate fully in the political system by which they were governed. Strengthening popular participation in political decision-making was clearly an important factor in realizing the right to self-determination. Even in formally democratic countries, there were sometimes structural, attitudinal and procedural barriers to the full participation of certain groups.

33. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations offered a means of reconciling the principle of self-determination with that of the territorial integrity of States. According to the Declaration, the right to self-determination should not be construed as authorizing or encouraging any action which would dismember or impair the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

34. Mr. PEREZ NOVOA (Cuba) said that he endorsed fully Mr. Arafat's statement to the Commission on 1 February 1994 in which he had denounced the continuing massive and flagrant violations of human rights in Palestine and the occupied territories and had reiterated his request to the Commission to take steps to put an end to them.

35. Cuba was encouraged by the signs of progress in the Middle East peace process. It hoped that a just and lasting solution could be found, which would embrace all the peoples of the region and would allow the Palestinian people to exercise its inalienable rights, including the right to set up its own independent State.

36. Cessation of human rights violations in Jericho and the Gaza Strip would undoubtedly be an important step forward. However, the international community must continue to be vigilant, condemning any such occurrences in the

rest of Palestine and the occupied territories. Failure to do so would not help to ensure a comprehensive and lasting peace.

37. Nevertheless some Governments, misusing the favourable climate created by recent developments in the peace process, were endeavouring to exonerate the guilty party, despite the fact that the reports before the Commission revealed that the Government of Israel was still systematically violating all the human rights of the Palestinian people, including the right to self-determination.

38. For more than thirty years, resolutions adopted by United Nations bodies had been reiterating that there could be no just and lasting peace in the Middle East without recognition of the right of the Palestinian people to self-determination and independence. Cuba was firmly committed to the heroic Palestinian people and its struggle for self-determination, peace and independence and would continue to support any decisions it might take in order to achieve those objectives.

39. As the occupying Power, Israel must comply with the relevant resolutions and cease all violations of human rights in the occupied Arab territories and must respect international law, the principles of international humanitarian law and its obligations under the Charter of the United Nations.

40. The Commission thus still had reason to condemn Israel's actions against the Palestinian people and should keep that question as a priority item on its agenda. His delegation rejected the efforts of those who, for ideological reasons or out of pure opportunism, wished to reduce the topic to a sub-item.

41. Mr. TYSZKO (Poland) said that the Commission's fiftieth session was taking place in a new atmosphere of hope, inspired by real prospects for just and peaceful solutions to a number of long-standing problems. While aware that Poland had only limited possibilities of making a direct contribution to such efforts, his delegation wished to express its deep appreciation to all those, on either side of the Middle-East conflict, who had courageously chosen the path of tolerance, peace and respect for human rights and also to those who had, through their good offices, opened avenues that had been closed for many years.

42. It was the task of the international community to give all possible support to efforts aimed at establishing a democratic order based on universal human rights. His Government would endorse all such efforts and any resolutions in support of them. Moreover, it hoped that the time was not far off when the Commission would no longer need to consider agenda item 4 and several other items that had been on its agenda for years.

43. Mrs. MARKIDES (Cyprus) said that the question of the violation of human rights in the occupied Arab territories was a matter of grave concern. As Mr. Arafat had observed, in his statement to the Commission, serious human rights violations were still occurring in the occupied territories. Mr. Arafat had also emphasized that there could be no peace under conditions of occupation and, indeed, occupation itself constituted a violation of human rights.

44. Cyprus, itself a victim of occupation, was naturally opposed to occupation wherever it occurred and supported the restoration of human rights and fundamental freedoms for all concerned and the implementation of the provisions of the Fourth Geneva Convention.

45. Her Government endorsed the inalienable right of peoples to self-determination and was committed to a just political solution to the Arab-Israeli conflict based on Security Council resolutions 242 (1967) and 338 (1973). In that connection, it welcomed the courageous step taken by the leaders of the State of Israel and the Palestine Liberation Organization in signing the Declaration of Principles which, it hoped, would be implemented in the near future, although the present and future difficulties should not be underestimated.

46. Mr. NAITO (Japan) said that the question of human rights in the occupied Arab territories was of particular importance at the Commission's current session because of the recent dramatic changes in the Middle East situation. It was to be hoped that the parties to the Middle East conflict would make progress in their negotiations and that a just, lasting and comprehensive peace would be achieved as soon as possible. In the meantime, all parties should refrain from acts of violence and strive to respect human rights, including full application by the Israeli Government of the provisions of the Fourth Geneva Convention.

47. His Government, which wholeheartedly supported the peace process and had devoted a great deal of energy to confidence-building between the Arab countries and Israel, had participated in the Washington meeting of 46 countries and international organizations in October 1993 to reaffirm their commitment to improving the living conditions of the Palestinian people in the short term and to establishing a structure for long-term economic growth. It intended to contribute some $200 million in assistance to the Palestinian people over the next two years and, to that end, it had sent a team to the region to examine development needs. Japan was also serving on an ad hoc liaison committee to ensure coordination and cooperation among the donors.

48. Bilateral and multilateral negotiations could not of themselves ensure a lasting solution to the conflict. Broader economic cooperation among the countries of the Middle East was also essential. In that context, Japan would continue to work for stability and prosperity in the region.

49. Ms. LUND (Observer for Norway), speaking on behalf of the Nordic countries, said that the Commission's current session was taking place against a backdrop of positive and encouraging developments in the Middle East peace process. The signature of the Declaration of Principles and the mutual recognition between Israel and the Palestine Liberation Organization had helped to replace the international community's sense of frustration and fear with new expectations and hope. The Nordic countries paid tribute to the parties involved for their outstanding courage and vision.

50. The foundations for a more peaceful and prosperous Middle East, with greater respect for human rights, had thus been laid and both Israel and the Palestinians had important roles to play. The parties involved must do their

best to implement the agreements and to overcome any attempts to derail the process. The full support of the international community was called for and, in that connection, the delegations she represented welcomed the almost unanimous support for the resolution on the subject (A/48/58) adopted by the General Assembly at its forty-eighth session.

51. At a recent meeting, the Nordic Ministers for Foreign Affairs had underscored the importance of supporting the peace process by substantial economic assistance to the occupied territories. The international community at large bore a major responsibility with regard to mobilizing the resources needed for the implementation of the agreement, and a promising start in that direction had been made by the Washington donors conference which had resulted in pledges of more than $2 billion. They had also noted that the multilateral process was serving as an indispensable framework for regional cooperation on such vital issues as water, disarmament, refugees, regional economic development and the environment.

52. The recent encouraging developments in the peace process had undoubtedly opened the door to an improvement in the human rights situation in the region in general and in the occupied territories in particular. Following the signing of the Declaration of Principles, many positive initiatives had been taken to improve the human rights situation in the occupied territories which, it was to be hoped, would soon lead to concrete results, such as an improvement in the conditions of detainees and the early release of political prisoners.

53. However, the Governments of the Nordic countries remained concerned at the overall human rights situation in the territories. In that regard, they reiterated their well-known view concerning the de jure applicability of the Fourth Geneva Convention to the occupied territories. The increase in the number of children injured and killed and the continued closure of schools had a particularly tragic effect on the future generation.

54. The time had come for Israelis and Palestinians alike to take further and decisive action towards peace and reconciliation. Unfortunately, since the signature of the Declaration of Principles, there had been an increase in violence in the territories, partly as a result of extremist groups seeking to derail the peace process. Such action must be vigorously condemned.

55. In that context, the delegations she represented stressed the importance of pursuing confidence-building measures, including the freezing of construction of new settlements and cessation of the expansion of existing ones by Israel. On the Arab side, lifting of the trade boycott against Israel and foreign firms dealing with Israel would be an appropriate step. Such measures would make an important contribution to the smooth and speedy implementation of the Declaration of Principles and further progress towards a comprehensive, just and lasting peace and observance of human rights in the region.

56. Mr. AKTAN (Observer for Turkey) said that the Israeli-Palestinian agreement of 13 September 1993 was an historic step towards achieving a lasting solution to the conflict in the region. The determination of the parties and the progress achieved in the talks between Israel and the

Palestine Liberation Organization with a view to giving effect to the interim agreement gave every reason to be hopeful about the outcome. As a country belonging to the same region, Turkey followed the peace process closely and would not fail to contribute to it if necessary.

57. The recent emergence of ethno-nationalism and tribalism made it even more necessary to clarify the content of the concept of self-determination and its relationship to the territorial integrity and political unity of sovereign States, which were equally important principles of the Charter. The provisions of the Vienna Declaration of 25 June 1993 were thus both welcome and timely. Paragraph 2 of the Declaration reaffirmed the principle of self-determination and stated that denial of the right of self-determination was a violation of human rights. The paragraph made a distinction, however, between the right of self-determination of peoples under colonial or other forms of alien domination or foreign occupation, on the one hand, and countries which encompassed people of different ethnic origins, on the other.

58. Such a distinction was well-founded as peoples under colonial domination or foreign occupation had never had the opportunity to express freely their views about their own future. By contrast, people of different ethnic origins living in a democratic sovereign State had freely opted to live within the boundaries of that State. For peoples under colonial domination or foreign occupation, self-determination was an inalienable right but, as paragraph 2 of the Declaration also stated, those peoples could exercise their right of self-determination only through legitimate action. In other words, terrorism was not admissible even for the purpose of self-determination. That was in keeping with General Assembly resolution 48/122 of 20 December 1993.

59. With regard to the people in the second category, the Vienna Declaration was also clear. It stated that the right of self-determination should not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity and political unity of sovereign and independent States.

60. That provision harmonized the principles of territorial integrity and self-determination. By adopting the Declaration unanimously, the international community had safeguarded peace and security in the post-cold-war era. It had realized that, at a time when ethno-nationalism and tribalism were on the rise, recognition of the right of self-determination to every community with different ethnic, cultural, religious or linguistic characteristics would have detrimental effects for the new international order.

61. Despite those provisions, the international community had witnessed widespread abuse of the right to self-determination. In the absence of a universally recognized definition of "people", some splinter groups had claimed self-determination for their "peoples". Some human rights circles almost automatically sympathized with them and gave them full moral and even material support. Encouraged by such support, those groups had gradually begun campaigns of violence in their countries and had caused internal disturbances. Almost forgetting who had started the violence, human rights circles had then stepped in to denounce violations committed by security forces.

62. Recalling that, under the Charter of the United Nations, the act of aggression was prohibited in inter-State relations, he said that the concept of a "just war" had thus been reintroduced into international law. A State could legitimately fight only within the framework of Articles 39 and 51 of the Charter. Internal conflicts were not prohibited, but were considered to come within the sovereignty of States in accordance with Article 2, paragraph 7.

63. Nevertheless, the concept of human rights did not address the initiator of violence i.e. the aggressor, nor its nature, objectives, mode of struggle or domestic context. Those elements were, however, of crucial importance in determining the source of violations. The view underlying that approach was that violence was inherent in the process of change in human society, that to curb violence might stiffen social forces and that what third parties could best do was to humanize strife, namely, to reduce violations without eliminating violence, an impossible task.

64. The fact that the ethnic groups, as smaller parties to a conflict, resorted to terrorism compounded the complexity of the situation. In that context, human rights supporters of those groups began to accuse security forces of human rights violations, conveniently forgetting that those groups themselves had initiated the terrorist warfare which in law constituted a crime against humanity. The objective was to brand States as violators of human rights and to represent the terrorism of those groups as a "just war".

65. The concept of human rights upheld by the non-governmental organizations was very narrow and concerned the judicial rights of ethnic terrorists. They accused States of committing human rights violations in excessively general terms, a situation which created conceptual confusion in the United Nations human rights system.

66. That confusion was further compounded if a third party was involved in the conflict. In the context of nuclear deterrence, externally instigated internal conflicts had replaced inter-State wars. As the Charter contained no provision that dealt directly with war of that kind, many countries had exploited the loophole. Ethnic groups had become instruments of that warfare and armed bands trained, indoctrinated, financed and commanded from neighbouring countries had infiltrated other countries to create ostensibly internal conflicts. There had always been a political interest in fomenting that kind of indirect aggression, which could never be regarded as a human rights issue.

67. At a time when decolonization had been completed and peace negotiations regarding occupation were under way, most of the remaining internal disturbances fell within the category of indirect aggression, the case of Turkey being one.

68. Mr. SIRAJ (Malaysia) said that, some four months after the historic signing of the Declaration of Principles on Interim Self-Government Arrangements, uncertainty and despair were beginning to set in. The deadline for the withdrawal of Israeli forces from the Jericho area and the Gaza Strip had passed, dashing the hopes of millions. The statement delivered by

Mr. Arafat to the Commission clearly illustrated that much remained to be done before a genuine, permanent peace could be achieved.

69. The human rights situation in the occupied Arab territories had deteriorated since the signature of the Declaration of Principles. The Israeli occupying Power had violated all recognized international standards of civilized behaviour and had paid scant heed to the Charter of the United Nations, the Universal Declaration of Human Rights, the Geneva and Hague Conventions and the international human rights instruments.

70. The most recent report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/48/557) contained numerous accounts of Israeli policies and practices which violated the human rights and fundamental freedoms of the civilian population in the occupied territories. The policy of annexation and settlement, pursued since 1967, was estimated by Israeli academicians to have deprived the Palestinians of 60 per cent of their land in the West Bank and 40 per cent of their land in the Gaza Strip. By another account, between 60 per cent and 70 per cent of the land in the occupied territories had been taken over by the military occupation forces or by Israeli settlers.

71. Despite the freeze on settlements, announced by the Government of Prime Minister Rabin, construction had actually intensified. There was an alarming number of settlements in the Syrian Golan - 40 already in existence or under construction and, by proposing a referendum, the Israeli authorities seemed to be encouraging public opinion to oppose withdrawal from the area. In addition, the confiscation of lands, the loss of grazing areas, overgrazing, desertification and the seizure and exploitation of water resources in the Syrian Golan had had harmful effects on the environment.

72. Arbitrary detention, administrative detention, long terms of imprisonment and deportation were practised under the Israeli legal system and, in particular, the military legal system. The occupying authorities had also resorted to harassment, physical abuse including killings, beatings and torture, searches, collective punishments - including the imposition of closed military zones and partial curfews - and the demolition of houses. The occupying Power had shown utter disregard for international law in the treatment of some 16,000 prisoners and detainees. Low food rations, insufficient medical care and overcrowded detention camps and prison cells were cited in the report. The passivity of the international community was deplorable in the face of such serious human rights violations.

73. The Declaration of Principles signed in September and other negotiations should help to build mutual confidence that would facilitate a settlement of the Palestinian issue within the framework of the relevant United Nations resolutions, particularly Security Council resolutions 242 (1967) and 338 (1973). Malaysia would fully support any initiative taken by the Palestinian leaders - represented by the PLO - to enable the Palestinian people to enjoy their full and legitimate rights and regain the occupied territories, including Jerusalem.

74. Mr. MIYENI (Pan Africanist Congress of Azania (PAC)) noted that international organizations generally equated self-determination with sovereignty. Paradoxically, South Africa had been regarded as an independent sovereign State on the basis of its participation in international organizations. The debate on self-determination in South Africa, however, should address such questions as who would represent South Africa in the United Nations during the election period; the relationship of United Nations agencies to the South African Government during the transition; whether or not agencies were able to function inside South Africa; and the status of foreign missions in South Africa. As the liberation movements in South Africa represented the majority of its people, they, too, should have a say in international issues concerning South Africa during the transition period.

75. South Africa had never truly emerged from colonialism, for, in 1910, the United Kingdom and the Netherlands had merely transferred control to their European agents. Apartheid, introduced in the 1940s to stem national independent sentiment, had gone hand in hand with colonialism. The indigenous Africans had thus remained dispossessed of their land and their right to self-rule. Self-determination must be defined not only in terms of a State's international relations but also in terms of the fundamental rights it granted to its people. According to that definition, self-determination was enjoyed by a minority of foreign occupying people and not by the indigenous African majority. It was the Commission's task to change that situation. South Africa should not be considered a sovereign State until the African majority had achieved full citizenship and self-determination, free and fair elections had been held, and a new constitution had been drafted. The solidarity of the international community with the South African people was crucial during the transitional phase.

76. Political violence in South Africa had claimed over 4,000 lives in 1993. Detention without trial, deaths in prison, police brutality, and death sentences were all part of that mounting violence. The South African Defence Forces (SADF), the strongest army in Africa, was reportedly deployed against the African community. SADF were also allied with the right-wing groups that opposed the transition to democracy.

77. Against that backdrop of violence, PAC had announced on 16 January 1994, a unilateral moratorium on armed struggle. The moratorium was intended to demonstrate the commitment of PAC to peace, which was essential to ensure free and fair elections on 27 April 1994. It trusted that other armed elements equally committed to peace would follow suit. The international community should ensure free and fair elections by sponsoring a voter education programme and monitoring the elections. The international community should also help the South African people to achieve economic empowerment, without which the whole concept of self-determination would be meaningless.

78. Mr. VITTORI (Pax Christi International), having paid tribute to the courage of the Israeli leaders and the PLO in taking a giant and almost unimaginable step towards peace by signing the Declaration of Principles, said that a massive education campaign would be necessary to win over the enemies of peace in both camps. The Deputy Minister for Foreign Affairs of Israel, had acknowledged that tensions existed between the occupying troops and the populations in the occupied territories. "Tensions", however, was a euphemism

for a situation which, unfortunately, had not changed since the signature of the Declaration: brutal repression resulting in deaths and injuries, collective punishment, the demolition of houses, arbitrary arrest, the continued detention of hundreds of persons without charges or trial, torture, mistreatment, etc. The two sides could not be judged equally where one was an occupying force and the other the people under its domination.

79. According to the Special Rapporteur on the human rights situation in the Palestinian territories, both Mr. Peres, Minister for Foreign Affairs of Israel, and Mrs. Hanan Ashrawi, head of the newly established Palestinian Human Rights Commission, had stressed that upgrading the living conditions in the territories was a top priority. The economic and social development of the territories and the enjoyment of human rights by their inhabitants were interdependent. People's support for the peace process in the occupied territories would depend largely on how much their living conditions improved.

80. Currently, 80,000 Palestinian families were deprived of income because the territories were closed off and there were no job opportunities for them in the Israeli-dominated economy. Mr. Peres' vision of a Middle East with huge development potential, where resources once used for armed forces would be channelled into investment for development, was a laudable one, but that vision must be swiftly translated into action in order to remain credible.

81. The continued Israeli settlement of the Palestinian territories, the Golan and South Lebanon was the chief obstacle to the peace process. The incentives offered to those settlers were responsible for the Israeli army's delay in withdrawing from the Gaza Strip and the Jericho area. The situation in Gaza, in particular, was extremely disturbing. A Palestinian governing authority must be urgently established there to prevent uncontrollable disorder from bringing the peace process to a halt.

82. Pax Christi International noted with satisfaction that the PLO had decided to establish an independent human rights commission in the territories over which it would eventually exercise authority and hoped that the International Committee of the Red Cross (ICRC) would be able to carry out its mission under the Geneva Conventions. It also reiterated its wish that Israel would recognize the applicability of those Conventions in the occupied territories.

83. Pax Christi International supported the continuation of the Special Rapporteur's mandate but noted with regret that he had been unable to carry out his mission satisfactorily. Although it understood the difficulties, it was disturbed to learn that the Special Rapporteur had been able to visit the territories for three days only in January and only as the personal guest of the Israeli Minister for Foreign Affairs.

84. Mr. AKHUND (Pakistan) said that, according to the Indian Minister of Finance, Prime Minister Bhutto had made some baseless charges against his country ...

85. Mrs. SABHARWAL (India), speaking on a point of order, asked the Chairman whether Pakistan was not exercising a right of reply in the guise of a statement on agenda item 9.

86. The CHAIRMAN said that, as agreed by the Commission, rights of reply would be exercised at the end of each day. He requested the representative of Pakistan to address his remarks to agenda item 9.

87. Mr. AKHUND (Pakistan) said that his remarks fell very much within the purview of agenda item 9; the Indian Minister of Finance, speaking on the subject of self-determination, had alleged that the Prime Minister of Pakistan had made some baseless charges, and he simply wished to say that the charges in question were in fact substantiated.

88. The right to self-determination was the keystone of the United Nations. It was a right that was inherent in the concept of freedom and was an organizing principal of democracy. The final vestiges of the colonial era were currently being eliminated and his Government welcomed the positive steps being taken towards multiracial and democratic rule in South Africa and the movement towards a settlement of the Middle East conflict, which, he hoped, would pave the way for the Palestinian people to exercise its right to self-determination.

89. Some speakers had suggested that, for pragmatic reasons, it might be necessary to temper the right to self-determination; otherwise, many States composed of diverse linguistic, ethnic, religious or racial groups might be dismembered. However, although the right to self-determination was an absolute and universal one, each particular case was different. For example, the failure to achieve a national consensus in the former Yugoslavia had led to a resurgence of a primitive nationalism that sought to expand its territory, denying other nationalities the right to self-determination. The cases of Canada and Belgium, on the other hand, showed that the pull of ethnic and linguistic ties could be reconciled with considerable success.

90. Pakistan had itself come into being on the basis of the principle of self-determination. The emergence of Pakistan and India had been the result of an historic compromise between the two major communities of the subcontinent to end their age-old contentions. The bitterness that remained was entirely due to the denial of self-determination to the people of Jammu and Kashmir. That right not only had been theirs by virtue of the compromise that had led to the independence of the subcontinent, but had also been specifically pledged to them by the Governments of India and Pakistan and by the United Nations.

91. Security Council resolution 47 (1948) placed on record the fact that both India and Pakistan desired that the question of the accession of Jammu and Kashmir to India or to Pakistan should be decided by the democratic method of a free and impartial plebiscite. Subsequently, after lengthy negotiations, that agreement of principle had been translated into specific and detailed arrangements for the holding of such a plebiscite.

92. The Indian Government maintained that the plebiscite had not been held because Pakistan had refused to withdraw and had not implemented its obligations under the Security Council resolutions. In actual fact, the Security Council had, over the years, sent mediators to help remove impediments to the holding of the plebiscite and had made a number of proposals; whereas Pakistan had accepted every one, India had rejected them

all. Even if it were assumed, however, for the sake of argument, that Pakistan had not carried out certain clauses of those resolutions, that did not mean that Kashmir's pledged right to self-determination, should be denied.

93. In 1951, the then Prime Minister of India, Jawaharlal Pandit Nehru, had said that the people of Kashmir must be allowed to decide and, in 1952, he had stressed that, if the people of Kashmir voted against remaining in India, India would have to accept that decision. At the moment, there were 600,000 Indian troops in Kashmir. They were there not to promote secularism or democracy but to beat Kashmir into submission and to prevent the Kashmiri people from redeeming Nehru's pledge.

94. Over the past 45 years, India had done everything in its power to maintain its occupation. It had initially obtained the support of the leader of Kashmir but, before long, he had landed in prison, where he had languished for many years. India's sham constituent assembly had dutifully endorsed the accession to India, but the Security Council had immediately declared its decisions null and void. Rigged elections had been staged from time to time in Indian-held Kashmir to create the semblance of popular approval for what was in fact an occupation. In the last such elections, in 1989, only 3 per cent of the electorate had gone to the polls.

95. All India's efforts to win the support of the Kashmiri people had been to no avail, and only brute force remained. India's assertion that Kashmir was an integral part of India rang thus increasingly hollow.

96. India's unity and secularism would not be strengthened by preventing Kashmir to decide on its own future. Far more intractable problems than Kashmir had been resolved, and he was convinced that India and Pakistan were not predestined to enmity; instead, they must follow the example of Peres and Arafat and of De Klerk and Mandela, and have the courage to make peace.

97. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that her organization was compelled to speak out on the right to self-determination of the Kurdish people. The municipal elections scheduled in Turkey for 27 March and the existence of political parties through which the Kurdish people could express itself might be interpreted as evidence that self-determination was near. In point of fact, the People's Labour Party (HEP), known for its close links with the Kurdish people, had been banned on 16 June 1993, and the new political party formed in its stead, the Freedom and Democracy Party (OZDEP), had also been dissolved. Since its establishment in 1990, 45 district chairmen and departmental heads of the HEP had been assassinated by Turkish death squads.

98. Undeterred by the disbanding of their party, former deputies of the OZDEP had formed the Democratic Party (DEP). Five chairmen of DEP local sections and one deputy had since been killed under mysterious circumstances, and the DEP leader - Yaser Kaya - was currently serving a two-year prison sentence for publicly criticizing the Government. The Constitutional Court of Turkey had initiated legal proceedings to outlaw the Democratic Party, and its deputies had received death threats.

99. The Turkish Government's reaction showed that it considered the DEP to be a threat in the forthcoming municipal elections; if the elections were conducted in a true democratic environment, the DEP would be assured a sweeping majority in the Kurdish areas.

100. To interfere in the elections in Kurdistan, Turkey had amended its electoral law. Voting had originally been scheduled to take place in each constituency, but in order to exercise tighter control over electoral procedures and restrict normal access for voters, special polling stations were to be set up, with the ballot boxes under the scrutiny of armed guards. The new electoral law also stipulated that members of the military in active service would be able to vote; there were more than 380,000 soldiers currently stationed in Turkish Kurdistan. Her organization thus urged the Commission to call upon the Turkish Government to offer tangible proof that the Kurdish people would be able to participate freely in the forthcoming elections.

101. The decolonization of Western Sahara, interrupted at the end of 1975 following its invasion and subsequent occupation by Morocco, had not been realized despite a United Nations presence in the territory for more than two years. Morocco had not only failed to meet its obligations under the United Nations peace plan, but even asserted that the United Nations had legalized the colonial status quo.

102. The flagrant violation of the peace plan had led to the transfer of more than 120,000 Moroccan subjects to the Saharan territory. The Government of Morocco maintained that those persons had the right to participate in the referendum on the future of the territory and its attitude in fact suggested that only Moroccan subjects living in the territory would be allowed to vote. That attitude seemed to be shared by the Secretary-General, who had recently stated that, if disagreements persisted between the parties, he would place the matter in the hands of the Security Council, which might well decide to hold a referendum even if one of the parties refused to participate. That was tantamount to saying that the United Nations would decide the fate of a people without regard for its will, a recipe for instability in the future.

103. Her organization felt duty-bound to denounce the continuing violations by Indonesia of the basic human rights of the Timorese people, including its right to self-determination. At the forty-eighth session of the Commission, Indonesia had signed a consensus statement on its commitment to protect human rights - a statement that had subsequently been approved by Commission resolution 1993/97 - but had made no attempt to implement that commitment in East Timor. Her organization therefore reiterated its deep concern at the situation in East Timor and appealed to the members of the Commission, including Indonesia, to respect the provisions of resolution 1993/97.

104. Mr. AHMAD (World Muslim Congress) said that his organization had already drawn attention to the plight of the subjugated people of Kashmir at the Commission's previous session; since then, the situation had become worse. Despite all the United Nations resolutions on the topic, India continued to evade the issue of the right to self-determination of the people of Kashmir, which was to be exercised under international supervision. The various elections that had been held in the territory had been manipulated to instal Governments of India's choice. Only 3 per cent of the Kashmiri people had

taken part in the sham elections of November 1989. When the last civilian Government set up by the occupying Power had been dismissed, the passive resistance to Indian rule had evolved into peaceful demonstrations of protest, to which India had responded by intensified repression, State terrorism and genocidal practices.

105. The Indian Government argued that Kashmir was "an integral part of India" and that the question of holding a referendum therefore did not arise. That assertion was based on the so-called accession of Kashmir to India under the ruler of the State of Jammu and Kashmir - the Maharaja - who had fled the state and lost all legitimacy. The alleged instrument of accession, if it had ever existed, could have been signed by the Maharaja only after the Indian invasion and occupation. In any case, subsequent action by the Security Council invalidated that argument: Kashmir was listed as a disputed territory in all United Nations documents.

106. Killings, reprisal attacks, a scorched-earth policy, wanton cruelty towards the civilian population, a systematic decimation of the younger generation and large-scale dishonouring of Kashmiri women belied India's claim to Kashmir: no national army ever behaved towards its own people as the Indian Army did in Kashmir. Indeed, India's refusal to allow the representatives of the International Committee of the Red Cross (ICRC) and other human rights organizations to visit Kashmir itself showed that something very sinister was going on there. Kashmir had been under Indian occupation for nearly half a century, time enough to win the acceptance of the population if that was possible.

107. India clearly had no legal or moral claim to Kashmir. The Commission must find ways of helping the Kashmiri people. The first steps might be to let India know that the violations of human rights in Jammu and Kashmir were not India's internal affair; to obtain free access to Kashmir for representatives of the ICRC and other human rights organizations; and to appoint a special rapporteur to investigate the human rights situation in the territory. In addition, the International Court of Justice could be asked for a legal opinion on the current status of Jammu and Kashmir vis-à-vis India.

The meeting rose at 12.55 p.m.